

4/11/13
6:40pm

COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

WILLIAM I. KOCH,

Plaintiff,

-v-

ERIC GREENBERG,

Defendant.

X

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/15/13

The Clerk of Court is Directed to:

Term motion (doc. #)
 Doc. and File As: Jury Verdict (.)

VERDICT FORM

All jurors must agree on the answers to the following questions:

I. Fraud

A. Fraudulent Misrepresentation

As you have been instructed, in order to establish fraud based on an affirmative misrepresentation, each of the following elements must be proven by clear and convincing evidence: (1) that Mr. Greenberg made a representation of fact; (2) that the representation was false and material; (3) that Mr. Greenberg knew the representation was false or made it with reckless disregard for its truth or falsity; (4) that Mr. Greenberg made the representation to induce Mr. Koch to rely upon it; and (5) that Mr. Koch did justifiably rely upon it, and sustained damages.

Do you find that Mr. Koch established each of the above elements by clear and convincing evidence, with respect to one or more of the 24 bottles of wine at issue, and therefore that Mr. Greenberg engaged in fraudulent misrepresentation?

YES ✓ NO _____

If NO, then you have found that Mr. Greenberg did not make a fraudulent misrepresentation with respect to the bottles at issue in this case, and you should proceed directly to I.B. at page 4.

If YES, please indicate whether Mr. Greenberg made the fraudulent misrepresentation with respect to:

ALL OF THE BOTTLES ✓

SOME (BUT NOT ALL) OF THE BOTTLES _____

If you chose ALL OF THE BOTTLES, proceed directly to I.B. at page 4.

If you chose SOME (BUT NOT ALL) OF THE BOTTLES, please indicate the bottles about which you find that Mr. Greenberg made a fraudulent misrepresentation using the table below, and then proceed to I.B. at page 4:

Yes	No	Wine	Trial Ex. No.	Koch ID No.
		1921 Chateau Cheval Blanc magnum	223	0 059886 6
		1921 Chateau Cheval Blanc magnum	224	0 059887 3
		1945 Chateau Lafite Rothschild magnum	222	0 059950 4
		1921 Chateau Lafleur magnum	205	0 060047 7
		1921 Chateau Lafleur magnum	206	0 060048 4
		1945 Chateau Lafleur magnum	207	0 060049 1
		1945 Chateau Lafleur magnum	229	0 060050 7
		1945 Chateau Lafleur magnum	230	0 060051 6
		1949 Chateau Lafleur magnum	208	0 060052 5
		1949 Chateau Lafleur magnum	209	0 060053 7
		1950 Chateau Lafleur magnum	210	0 060054 7
		1950 Chateau Lafleur magnum	211	0 060055 2
		1950 Chateau Lafleur magnum	212	0 060056 9
		1950 Chateau Lafleur magnum	213	0 060057 6
		1950 Chateau Lafleur magnum	214	0 060058 3
		1864 Chateau Latour bottle	201	0 059958 0
		1928 Chateau Latour bottle	227	0 059966 5
		1928 Chateau Latour bottle	200	0 059967 2
		1921 Chateau Petrus magnum	225	0 060025 5
		1928 Chateau Petrus magnum	215	0 060026 2
		1928 Chateau Petrus magnum	216	0 060027 9
		1950 Chateau Petrus magnum	228	0 060029 3
		1950 Chateau Petrus magnum	217	0 060030 3
		1950 Chateau Petrus magnum	218	0 060031 2

B. Fraudulent Concealment

As you have been instructed, in order to establish fraud based on fraudulent concealment, each of the following elements must be proven by clear and convincing evidence: (1) that Mr. Greenberg failed to discharge a duty to disclose; (2) that Mr. Greenberg intended to defraud Mr. Koch, or a class of persons that included Mr. Koch; (3) that Mr. Greenberg's concealment of material information was a substantial factor in Mr. Koch's decision to purchase the bottles of wine at issue in this case, meaning Mr. Koch relied on Mr. Greenberg's concealment in purchasing the bottles of wine; and (4) that Mr. Koch suffered damages.

Do you find that Mr. Koch established each of the above elements by clear and convincing evidence, with respect to one or more of the 24 bottles of wine at issue, and therefore that Mr. Greenberg engaged in fraudulent concealment?

YES ✓ NO _____

If NO, then you have found that Mr. Greenberg did not engage in fraudulent concealment with respect to the bottles at issue in this case, and you should proceed directly to I.C. at page 6.

If YES, please indicate whether Mr. Greenberg made the fraudulent concealment with respect to:

ALL OF THE BOTTLES ✓

SOME (BUT NOT ALL) OF THE BOTTLES _____

If you chose ALL OF THE BOTTLES, proceed directly to I.C. at page 6.

If you chose SOME (BUT NOT ALL) OF THE BOTTLES, please indicate the bottles about which you find that Mr. Greenberg engaged in fraudulent concealment using the table below, and then proceed to I.C. at page 6:

Yes	No	Wine	Trial Ex. No.	Koch ID No.
		1921 Chateau Cheval Blanc magnum	223	0 059886 6
		1921 Chateau Cheval Blanc magnum	224	0 059887 3
		1945 Chateau Lafite Rothschild magnum	222	0 059950 4
		1921 Chateau Lafleur magnum	205	0 060047 7
		1921 Chateau Lafleur magnum	206	0 060048 4
		1945 Chateau Lafleur magnum	207	0 060049 1
		1945 Chateau Lafleur magnum	229	0 060050 7
		1945 Chateau Lafleur magnum	230	0 060051 6
		1949 Chateau Lafleur magnum	208	0 060052 5
		1949 Chateau Lafleur magnum	209	0 060053 7
		1950 Chateau Lafleur magnum	210	0 060054 7
		1950 Chateau Lafleur magnum	211	0 060055 2
		1950 Chateau Lafleur magnum	212	0 060056 9
		1950 Chateau Lafleur magnum	213	0 060057 6
		1950 Chateau Lafleur magnum	214	0 060058 3
		1864 Chateau Latour bottle	201	0 059958 0
		1928 Chateau Latour bottle	227	0 059966 5
		1928 Chateau Latour bottle	200	0 059967 2
		1921 Chateau Petrus magnum	225	0 060025 5
		1928 Chateau Petrus magnum	215	0 060026 2
		1928 Chateau Petrus magnum	216	0 060027 9
		1950 Chateau Petrus magnum	228	0 060029 3
		1950 Chateau Petrus magnum	217	0 060030 3
		1950 Chateau Petrus magnum	218	0 060031 2

C. Damages

If you find, by clear and convincing evidence, that Mr. Greenberg engaged in fraud by answering "YES" to either I.A. or I.B. above, you must determine how much to award Mr. Koch in monetary damages. (For your reference, attached as Appendix I is a list of the wines at issue, and the prices paid for them.)

Amount of compensatory damages	Wine	Trial Ex. No.	Koch ID No.
15,340	1921 Chateau Cheval Blanc magnum	223	0 059886 6
15,340	1921 Chateau Cheval Blanc magnum	224	0 059887 3
4,956	1945 Chateau Lafite Rothschild magnum	222	0 059950 4
16,620	1921 Chateau Lafleur magnum	205	0 060047 7
17,300	1921 Chateau Lafleur magnum	206	0 060048 4
17,300	1945 Chateau Lafleur magnum	207	0 060049 1
16,520	1945 Chateau Lafleur magnum	229	0 060050 7
17,300	1945 Chateau Lafleur magnum	230	0 060051 6
14,160	1949 Chateau Lafleur magnum	208	0 060052 5
15,340	1949 Chateau Lafleur magnum	209	0 060053 7
15,340	1950 Chateau Lafleur magnum	210	0 060054 7
15,340	1950 Chateau Lafleur magnum	211	0 060055 2
12,587	1950 Chateau Lafleur magnum	212	0 060056 9
12,587	1950 Chateau Lafleur magnum	213	0 060057 6
12,587	1950 Chateau Lafleur magnum	214	0 060058 3
14,160	1864 Chateau Latour bottle	201	0 059958 0
3,737	1928 Chateau Latour bottle	227	0 059966 5
2,557	1928 Chateau Latour bottle	200	0 059967 2
29,500	1921 Chateau Petrus magnum	225	0 060025 5
12,980	1928 Chateau Petrus magnum	215	0 060026 2
15,340	1928 Chateau Petrus magnum	216	0 060027 9
17,300	1950 Chateau Petrus magnum	228	0 060029 3
20,060	1950 Chateau Petrus magnum	217	0 060030 3
25,060	1950 Chateau Petrus magnum	218	0 060031 2

II. New York General Business Law

A. New York General Business Law § 349

As you have been instructed, in order to establish a violation of N.Y.G.B.L. § 349, each of the following elements must be established by a preponderance of evidence: (1) that Mr. Greenberg engaged in an act or practice that is deceptive or misleading in a material way; (2) that Mr. Koch suffered injury as a result; and (3) that the alleged deceptive business practices were aimed at the consumer.

Do you find that Mr. Koch established each of the above elements by a preponderance of the evidence, with respect to one or more of the 24 bottles of wine at issue, and therefore that Mr. Greenberg engaged in materially deceptive business practices?

YES

NO _____

If NO, then you have found that Mr. Greenberg did not violate N.Y.G.B.L. § 349, and you should proceed directly to II.B. at page 10.

If YES, please indicate whether Mr. Greenberg engaged in materially deceptive business practices with respect to:

ALL OF THE BOTTLES

SOME (BUT NOT ALL) OF THE BOTTLES _____

If you chose ALL OF THE BOTTLES, proceed directly to II.A.1. at page 9.

If you chose SOME (BUT NOT ALL) OF THE BOTTLES, please indicate the bottles about which you find that Mr. Greenberg engaged in materially deceptive business practices using the table below, and then proceed to II.A.1. at page 9:

Yes	No	Wine	Trial Ex. No.	Koch ID No.
		1921 Chateau Cheval Blanc magnum	223	0 059886 6
		1921 Chateau Cheval Blanc magnum	224	0 059887 3
		1945 Chateau Lafite Rothschild magnum	222	0 059950 4
		1921 Chateau Lafleur magnum	205	0 060047 7
		1921 Chateau Lafleur magnum	206	0 060048 4
		1945 Chateau Lafleur magnum	207	0 060049 1
		1945 Chateau Lafleur magnum	229	0 060050 7
		1945 Chateau Lafleur magnum	230	0 060051 6
		1949 Chateau Lafleur magnum	208	0 060052 5
		1949 Chateau Lafleur magnum	209	0 060053 7
		1950 Chateau Lafleur magnum	210	0 060054 7
		1950 Chateau Lafleur magnum	211	0 060055 2
		1950 Chateau Lafleur magnum	212	0 060056 9
		1950 Chateau Lafleur magnum	213	0 060057 6
		1950 Chateau Lafleur magnum	214	0 060058 3
		1864 Chateau Latour bottle	201	0 059958 0
		1928 Chateau Latour bottle	227	0 059966 5
		1928 Chateau Latour bottle	200	0 059967 2
		1921 Chateau Petrus magnum	225	0 060025 5
		1928 Chateau Petrus magnum	215	0 060026 2
		1928 Chateau Petrus magnum	216	0 060027 9
		1950 Chateau Petrus magnum	228	0 060029 3
		1950 Chateau Petrus magnum	217	0 060030 3
		1950 Chateau Petrus magnum	218	0 060031 2

1. Compensatory Damages Under § 349

If you have found, by a preponderance of the evidence, that Mr. Greenberg violated § 349 by answering "YES" to II.A. above, you must determine how much to award Mr. Koch in monetary damages. Please indicate the amount for each bottle of wine on the table below. (For your reference, attached as Appendix I is a list of the wines at issue, and the prices paid for them.)

2. Treble Damages Under § 349

As you were instructed, if you find, by a preponderance of the evidence, that Mr. Greenberg willfully or knowingly violated § 349, you may also choose to award treble damages, which may constitute up to \$1,000 per violation. If you choose to award treble damages, you must indicate the amount, up to \$1,000 per violation, on the table below.

Amount of Compensatory Damages	Amount of Treble Damages	Wine	Trial Ex. No.	Koch ID No.
15,340	1,000	1921 Chateau Cheval Blanc magnum	223	0 059886 6
15,340	1,000	1921 Chateau Cheval Blanc magnum	224	0 059887 3
4,956	1,000	1945 Chateau Lafite Rothschild magnum	222	0 059950 4
16,520	1,000	1921 Chateau Lafleur magnum	205	0 060047 7
17,700	1,000	1921 Chateau Lafleur magnum	206	0 060048 4
17,700	1,000	1945 Chateau Lafleur magnum	207	0 060049 1
16,520	1,000	1945 Chateau Lafleur magnum	229	0 060050 7
17,700	1,000	1945 Chateau Lafleur magnum	230	0 060051 6
14,160	1,000	1949 Chateau Lafleur magnum	208	0 060052 5
15,340	1,000	1949 Chateau Lafleur magnum	209	0 060053 7
15,340	1,000	1950 Chateau Lafleur magnum	210	0 060054 7
15,340	1,000	1950 Chateau Lafleur magnum	211	0 060055 2
12,587	1,000	1950 Chateau Lafleur magnum	212	0 060056 9
12,587	1,000	1950 Chateau Lafleur magnum	213	0 060057 6
12,587	1,000	1950 Chateau Lafleur magnum	214	0 060058 3
14,160	1,000	1864 Chateau Latour bottle	201	0 059958 0
3,737	1,000	1928 Chateau Latour bottle	227	0 059966 5
2,557	1,000	1928 Chateau Latour bottle	200	0 059967 2
29,500	1,000	1921 Chateau Petrus magnum	225	0 060025 5
12,980	1,000	1928 Chateau Petrus magnum	215	0 060026 2
15,340	1,000	1928 Chateau Petrus magnum	216	0 060027 9
17,700	1,000	1950 Chateau Petrus magnum	228	0 060029 3
20,060	1,000	1950 Chateau Petrus magnum	217	0 060030 3
20,060	1,000	1950 Chateau Petrus magnum	218	0 060031 2

B. New York General Business Law § 350

As you have been instructed, in order to establish a violation of N.Y.G.B.L. § 350, each of the following elements must be established by a preponderance of the evidence: (1) that an advertisement by Mr. Greenberg had an impact on consumers at large; (2) was deceptive or misleading in a material way; and (3) resulted in injury to the Mr. Koch.

Do you find that Mr. Koch established each of the above elements by a preponderance of the evidence, with respect to one or more of the 24 bottles of wine at issue, and therefore that Mr. Greenberg engaged in false advertising?

YES ✓ NO _____

If NO, then you have found that Mr. Greenberg did not violate N.Y.G.B.L. § 350 and you should proceed directly to III. at page 13.

If YES, please indicate whether Mr. Greenberg engaged in false advertising with respect to:

ALL OF THE BOTTLES ✓

SOME (BUT NOT ALL) OF THE BOTTLES _____

If you chose ALL OF THE BOTTLES proceed directly to II.B.1. at page 12.

If you chose SOME (BUT NOT ALL) OF THE BOTTLES, please indicate the bottles about which you find that Mr. Greenberg engaged in false advertising using the table below, and then proceed to II.B.1. at page 12:

Yes	No	Wine	Trial Ex. No.	Koch ID No.
		1921 Chateau Cheval Blanc magnum	223	0 059886 6
		1921 Chateau Cheval Blanc magnum	224	0 059887 3
		1945 Chateau Lafite Rothschild magnum	222	0 059950 4
		1921 Chateau Lafleur magnum	205	0 060047 7
		1921 Chateau Lafleur magnum	206	0 060048 4
		1945 Chateau Lafleur magnum	207	0 060049 1
		1945 Chateau Lafleur magnum	229	0 060050 7
		1945 Chateau Lafleur magnum	230	0 060051 6
		1949 Chateau Lafleur magnum	208	0 060052 5
		1949 Chateau Lafleur magnum	209	0 060053 7
		1950 Chateau Lafleur magnum	210	0 060054 7
		1950 Chateau Lafleur magnum	211	0 060055 2
		1950 Chateau Lafleur magnum	212	0 060056 9
		1950 Chateau Lafleur magnum	213	0 060057 6
		1950 Chateau Lafleur magnum	214	0 060058 3
		1864 Chateau Latour bottle	201	0 059958 0
		1928 Chateau Latour bottle	227	0 059966 5
		1928 Chateau Latour bottle	200	0 059967 2
		1921 Chateau Petrus magnum	225	0 060025 5
		1928 Chateau Petrus magnum	215	0 060026 2
		1928 Chateau Petrus magnum	216	0 060027 9
		1950 Chateau Petrus magnum	228	0 060029 3
		1950 Chateau Petrus magnum	217	0 060030 3
		1950 Chateau Petrus magnum	218	0 060031 2

1. Compensatory Damages Under § 350

If you have found, by a preponderance of the evidence, that Mr. Greenberg violated § 350 by answering "YES" to II.B. above, you must determine how much to award Mr. Koch in monetary damages. Please indicate the amount for each bottle of wine on the table below. (For your reference, attached as Appendix I is a list of the wines at issue, and the prices paid for them.)

Amount of compensatory damages	Wine	Trial Ex. No.	Koch ID No.
12,540	1921 Chateau Cheval Blanc magnum	223	0 059886 6
12,540	1921 Chateau Cheval Blanc magnum	224	0 059887 3
4,956	1945 Chateau Lafite Rothschild magnum	222	0 059950 4
16,520	1921 Chateau Lafleur magnum	205	0 060047 7
17,700	1921 Chateau Lafleur magnum	206	0 060048 4
17,700	1945 Chateau Lafleur magnum	207	0 060049 1
16,520	1945 Chateau Lafleur magnum	229	0 060050 7
17,700	1945 Chateau Lafleur magnum	230	0 060051 6
14,160	1949 Chateau Lafleur magnum	208	0 060052 5
15,340	1949 Chateau Lafleur magnum	209	0 060053 7
15,340	1950 Chateau Lafleur magnum	210	0 060054 7
15,340	1950 Chateau Lafleur magnum	211	0 060055 2
12,587	1950 Chateau Lafleur magnum	212	0 060056 9
12,587	1950 Chateau Lafleur magnum	213	0 060057 6
12,587	1950 Chateau Lafleur magnum	214	0 060058 3
14,160	1864 Chateau Latour bottle	201	0 059958 0
3,737	1928 Chateau Latour bottle	227	0 059966 5
2,557	1928 Chateau Latour bottle	200	0 059967 2
29,500	1921 Chateau Petrus magnum	225	0 060025 5
12,980	1928 Chateau Petrus magnum	215	0 060026 2
15,340	1928 Chateau Petrus magnum	216	0 060027 9
17,700	1950 Chateau Petrus magnum	228	0 060029 3
20,060	1950 Chateau Petrus magnum	217	0 060030 3
20,060	1950 Chateau Petrus magnum	218	0 060031 2

III. Apportionment of Fault as to N.Y. G.B.L. Claims

During this case you heard evidence about a 2005 auction conducted by Zachys, in which Mr. Greenberg was the consigner. Zachys was once a defendant in this case, but is no longer a part of this case. Nevertheless, you must still consider whether Zachys was responsible for some portion, if any, of the damages you have awarded in Section II (the N.Y. G.B.L. claims). If you find that Zachys, as well as Mr. Greenberg, was responsible for Mr. Koch's monetary damages, then you must decide the percentage of total fault that each bears for violation of N.Y. G.B.L. § 349 and/or § 350. In doing so, you should weigh the conduct of Mr. Greenberg and Zachys and consider all the circumstances based on the evidence at trial.

A. N.Y. G.B.L. § 349

If you found in II.A. that Mr. Greenberg engaged in materially deceptive business practices, indicate below the percentage of total fault that each of Mr. Greenberg and Zachys bears for the violation:

Mr. Greenberg's Percentage Fault: 100 %

Zachys' Percentage Fault: 0 %

The total of these two entries must equal 100%.

B. N.Y. G.B.L. § 350

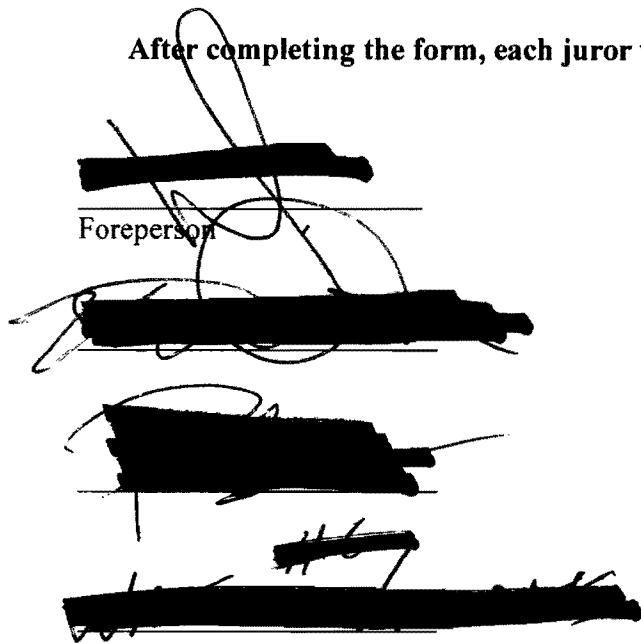
If you found in II.B. that Mr. Greenberg engaged in false advertising, indicate below the percentage of total fault that each of Mr. Greenberg and Zachys bears for the violation.

Mr. Greenberg's Percentage Fault: 75 %

Zachys' Percentage Fault: 25 %

The total of these two entries must equal 100%.

After completing the form, each juror who agrees with this verdict must sign below:



Date: 4/11/13

